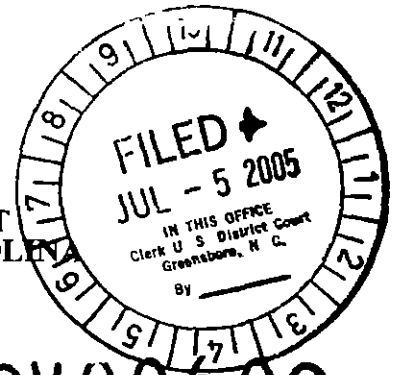


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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



Derek Marquis Fleming,

Petitioner,

v

United States of America,

Respondent

1:05CV00602

29ICR179-1, 29ICR78-1

**RECOMMENDATION AND ORDER
OF MAGISTRATE JUDGE ELIASON**

Petitioner, a federal prisoner, has submitted a "motion for clarification of judgment and commitment order " (Docket no 172) He has also filed a motion for prompt disposition of this motion for clarification (Docket no 175) In the motion for clarification, petitioner asks the Court to change his criminal judgment which was entered in 1992 to reflect that he was acquitted of an offense (Docket no 172 at 3) Such relief may only be granted in a motion to vacate sentence pursuant to 28 U S C § 2255 This motion for clarification should therefore be treated as such a motion However, petitioner has already attacked his conviction and sentence in a section 2255 motion that was dismissed with prejudice [No 2 93CV584] Consequently, petitioner must move in the Fourth Circuit Court of Appeals for an order authorizing this district court to consider another section 2255 motion This is required by 28 U S C § 2255 and 28 U S C § 2244 See AO 243 (MDNC 3/97), Instructions, ¶ (4), which is enclosed Because of this pleading failure, this particular motion should be filed and then dismissed

IT IS THEREFORE RECOMMENDED that petitioner's motion for clarification (docket no 172) be construed to be a motion to vacate sentence under 28 U S C § 2255 and that it be filed and then dismissed sua sponte for failure to obtain certification for this section

2255 application by filing a Motion for Authorization in the court of appeals as required by 28 U S C §§ 2255 and 2244 and Fourth Circuit Local Rule 22(d)

IT IS THEREFORE ORDERED that the clerk send petitioner a copy of this recommendation, instruction forms for filing Section 2255 motions in this Court and Motions for Authorization in the court of appeals, and four copies of Section 2255 motion forms (more copies will be sent on request) Petitioner should keep the original and two copies of the Section 2255 motion which can be submitted in this court if petitioner obtains approval from the Fourth Circuit

IT IS FURTHER ORDERED that petitioner's motion for prompt disposition (docket no 175) be denied as moot


United States Magistrate Judge

July 5, 2005